

1 **JACOBSON LAW FIRM**

2 2730 EAST BROADWAY BLVD., SUITE 160

3 TUCSON, ARIZONA 85716

4 TELEPHONE (520) 885-2518

5 FACSIMILE (520) 844-1011

6 jeff@jhj-law.com

7 Jeffrey H. Jacobson, PCC #65402; SB#019502

8 Attorney for Plaintiff

9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF ARIZONA**

11 CARRIE FERRARA CLARK,

12 Plaintiff,

13 vs.

14 CITY OF TUCSON,

15 Defendant.

Case No. 4:14-CV-02543-TUC-CKJ

**PLAINTIFF’S OBJECTIONS TO
DEFENDANT’S MOTION FOR
CLARIFICATION OF THE COURT’S
ORDER, DOC. 86**

16 Plaintiff Carrie Ferrara Clark, through undersigned counsel, objects to Defendant’s
17 Motion for Clarification of the Court’s Order, Doc. 86. For the following reasons, Plaintiff
18 should not be required to respond to Defendant’s Non-Uniform Interrogatories numbers 11
19 and 12, and Interrogatory number 13(a) should be narrowed to the allegations first
20 appearing in Plaintiff’s Third Amended Complaint.

21 Discovery ended regarding the matters alleged in Plaintiff’s Second Amended
22 Complaint on April 3, 2017. (Doc. 63.) In its Order granting Plaintiff’s Motion for Leave to
23 File Her Third Amended Complaint, the Court Ordered that “**Discovery** limited to the
24 issues raised in the Third Amended Complaint shall be **extended** to June 30, 2017.” (Doc.
25 86, p. 8, emphasis in original.)

26 Despite this Court’s clear direction, Defendant now attempts to re-open discovery on
the Fair Labor Standards Act (FLSA) claims through Non-Uniform Interrogatories number
11 and 12. Count one of the Second Amended Complaint contained multiple allegations
under FLSA. Plaintiff’s Third Amended Complaint unbundled the FLSA allegations into
two separate counts - one for discrimination and one for retaliation. The substance and

1 nature of the FLSA allegations, however, did not change from the Second Amended to
2 Third Amended Complaint. Defendant's Motion for Clarification also fails to provide an
3 explanation for why it failed to propound these interrogatories before the close of
4 discovery. As Defendant pointed out in its Opposition to Plaintiff's Motion for Leave to
5 File Her Third Amended Complaint (Doc. 71), this case was originally filed on July 23,
6 2014, in state court. "The original complaint alleged that Plaintiff had been denied adequate
7 facilities for expressing milk while employed by the Tucson Fire Department ("TFD") as
8 required by the Fair Labor Standards Act ("FLSA"), discriminated against based upon her
9 sex in violation of Title VII and subject to retaliation for exercising her rights under FLSA
10 and Title VII." *Id.* at p. 2.

11 Perhaps realizing its legal and factual shortcomings regarding the FLSA allegations
12 once Plaintiff filed her Cross-Motion for Summary Judgment, Defendant now seeks to
13 reopen the record to conduct additional discovery on Plaintiff's FLSA claims. Defendant,
14 however, has failed to articulate a reason for its undue delay and failure to propound these
15 interrogatories for almost three years. The Court's Order was clear and unequivocal
16 regarding the scope of any remaining discovery in this case. Nevertheless, Defendant seeks
17 to reopen discovery under the guise of "clarifying" this Court's May 16, 2017, Order when
18 in fact it is really a motion to reopen discovery. For these reasons, Plaintiff objects to
19 Defendant's Non-Uniform Interrogatories numbers 11 and 12 as outside the scope of the
20 Court's May 16, 2017 Order.

21 Similarly, Defendant's Interrogatory number 13(a) is overly broad, seeking
22 information regarding "each adverse employment action which [Plaintiff] allege[s] violated
23 Title VII", without limiting the scope to the supplemental allegations new to the Third
24 Amended Complaint. Plaintiff therefore objects to Defendant's Interrogatory number 13(a).
25 Once again, because discovery has closed, and because this Court has limited discovery
26 going forward, Plaintiff should only be required to respond to discovery requests
concerning allegations that are new to her Third Amended Complaint.

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

DATED this 25th day of May, 2017.

JACOBSON LAW FIRM

s/Jeffrey H. Jacobson
Jeffrey H. Jacobson
Attorney for Plaintiff

Filed via the CM/ECF system and copy electronically
provided this 25th day of May, 2017, to:

Michelle Saavedra
Principal Assistant City Attorney
Office of the City Attorney, Civil Division
255 West Alameda, 7th Floor
Tucson, AZ 85701

Michael W.L. McCrory
Principal Assistant City Attorney
Office of the City Attorney, Civil Division
255 West Alameda, 7th Floor
Tucson, AZ 85701